

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

JUL 03 2008

JOHN P. GORCORAN, CLERK

BY: *[Signature]*
DEPUTY CLERK

UNITED STATES OF AMERICA,) MAG. DOCKET NO. 3:00MJ00017
)
Plaintiff)
)
v.) MEMORANDUM OPINION
)
25 GHOSTRIDGE) By: B. Waugh Crigler
STANARDSVILLE, VA) U.S. Magistrate Judge
)
Defendant)

On June 23, 2008 Richard A. Rowzie ("Rowzie"), a state inmate, filed a *pro se* pleading entitled "Motion for Statement and Assistance From FBI" ("Motion"). In that pleading, Rowzie seeks an order from this court directing the Federal Bureau of Investigation ("FBI") and special agent Jane Collins ("Collins") to provide a "statement and assistance in order to show whether Defendant's missing firearms and other related property were seized...by legal act of law enforcement or [sic] were illegally taken by an act of 'Asportation'."

This pleading is the latest in a number of letters, pleadings or motions Rowzie has filed concerning the execution of the search warrant issued and executed in this case in January 2000. The court's docket sheet reflects that since August 18, 2004, Rowzie has had some seventeen letter communications with the court, five of which have been construed as motions, all addressing substantially the same subject matter addressed here. On December 20, 2004, the court entered an Order dismissing his first motion for return of property (Dkt. No. 11); on June 27, 2005 (Dkt. No. 22) the court dismissed a second motion related to the same search; and on

September 7, 2007 the court dismissed Rowzie's third motion seeking "information" about or return of property relating to the search (Dkt. No. 26). During the course of these various proceedings, the Government provided information it possessed and tendered any returnable property under its control to Rowzie.

In this latest pleading, Rowzie seeks the entry of an order by the judicial branch requiring an agency and agent of the executive branch to provide a statement "as to their knowledge of the Defendant's complaint/report..." and to expedite his "complaint/report and the investigation thereof." (Motion at 10-11).

The FBI is in the Department of Justice, under the authority of the Attorney General of the United States, and which, in turn, is an executive department of the United States. 28 U.S.C. §§ 501, 503 and 531. All are part of the executive branch of government under Article II of the Constitution of the United States. The authority to investigate and conduct legal proceedings on behalf of the United States, whether criminal or civil, lies with the Attorney General. 28 U.S.C. § 515-16.

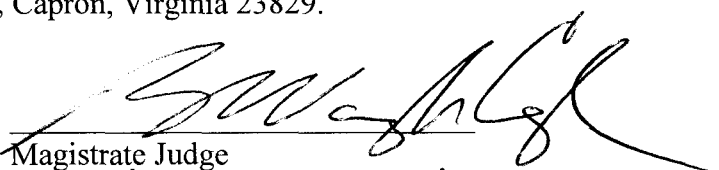
This United States District Court was formed by Congress pursuant to authority granted under Article III of the Constitution of the United States, and its power extends only to the adjudication of cases and controversies arising under the Constitution, law and treaties of the United States. Art. III, U. S. Constitution; 28 U.S.C. § 127(b). The court has no power to initiate investigative proceedings, whether criminal or civil, only to adjudicate. By the same token, the court does have authority to issue search and seizure warrants and to address claims for return of items seized under such warrants. Rules 41(e) and (g) Fed. R. Cr. P.

As indicated above, the court already has addressed issues over which it has jurisdiction. The instant Motion essentially asks this court to carry out the duties reserved to the

Attorney General of the United States, and which are beyond the jurisdiction of the federal courts. Furthermore, the Motion cannot and will not be construed by the undersigned as another motion under Rule 41 for the return of property. Accordingly, Rowzie's Motion will be dismissed.

The Clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion to all counsel of record and to Richard A. Rowzie, 315560, Deerfield Correctional Center, 21360 Deerfield Drive, Capron, Virginia 23829.

ENTERED:


Magistrate Judge


Date

July 3, 2008